

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

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U.S. DISTRICT COURT

2007 AUG 27 A 10:56

In Re Thomas Trains Paint Litigation

MDL-_____

**JOINT MOTION OF CERTAIN PLAINTIFFS FOR TRANSFER
OF ACTIONS TO THE NORTHERN DISTRICT OF ILLINOIS
PURSUANT TO 28 U.S.C. § 1407**

Plaintiffs Chad J. Sweeney, Gregg Theobald, Shay Theobald, Robert Miller, Rachel Miller, Channing Hesse, Kimm Walton, John O'Leary, Christine Waller, Paul Djurisc, Rebekah Lockhart, Theresa Reddell, Christa Marie Stratton, James Weldon Stratton, Christopher Brady, Tom Brady, Austin Rohde, Nicholas Rohde, Robyne Rohde, Caryn Hudspeth, Patrick Hudspeth, Claudine M. Kreiner, Ryan R. Kreiner, Cherise Wilson, Aive Rei-Ghafoor, Tonya Tubbs, Thomas Toms, Tracy Hofmann, Sheree Argiris, Cheng Yin, and C. Kelly respectfully submit this joint motion before the Judicial Panel on Multidistrict Litigation for an Order, under 28 U.S.C. §1407, for the following:

(i) transfer of five putative class actions, currently pending in the Southern District of Indiana, Eastern District of New York, District of New Jersey, Eastern District of Arkansas, and the Central District of California¹ as well as any cases that may subsequently be filed asserting similar or related claims, to the United States District Court for the Northern District of Illinois; and (ii) coordination of these actions with the

¹ These cases include: 1) *Sweeney et al. v. RC2 Corp. et al.*, Civil Action No. 1:07-cv-00772 (S.D. Ind.); (2) *Kelly, et al. v. RC2, Corp.*, Civil Action No. 1:07-cv-02525, (E.D.N.Y.); (3) *Murdock v. RC2 Corp. et al.*, Civil Action No. 2:07-cv-03376 (D.N.J.); (4) *Stratton et al. v. RC2 Corp. et al.*, Civil Action No. 4:07-cv-00640 (E.D. Ark.); and (5) *Martinez v. RC2 Corporation*, Civil No. 07-cv-5401-AHM (C.D. Ca.) (hereafter the "five Actions").

nine similar actions that are currently pending in the Northern District of Illinois.² In support of this Motion for Transfer and Coordination, Plaintiffs state as follows:

1. The class actions for which transfer and coordination are proposed arise out of the same conduct and allege virtually identical claims. Each action is brought on behalf of a class of all persons who purchased and/or paid for various Thomas & Friends™ Wooden Railway Toys (“Thomas Trains”) recalled by defendants RC2 Corporation and Learning Curve Brands Inc. on June 13, 2007, after determining that the surface paints on certain of its railway toys contain lead.

2. This motion is filed on behalf of plaintiffs in the following actions: 1) *Walton v. RC2 Corporation, et al.*, Docket No. 07CV3614 (N.D. IL.); 2) *Sweeney et al. v. RC2 Corp. et al.*, Civil Action No. 1:07-cv-00772 (S.D. Ind.); 3) *Hesse, et al. v. Learning Curve Brands, Inc. et al.*, Civil Action No. 1:07-cv-03451 (N.D. Ill.); 4) *O’Leary, et at. v. Learning Curve Brands, Inc.*, Civil Action No. 1:07-cv-03682, (N.D. Ill.); 5) *Djurisic, et al. v. Apax Partners, Inc. et al.*, Civil Action No.1:07-cv-03707, (N.D. Ill.); 6) *Reddell, et al. v. Learning Curve Brands, Inc. et al.*, Civil Action No. 1:07-cv-03747, (N.D. Ill.); 7) *Stratton et al. v. RC2 Corp. et al.*, Civil Action No. 4:07-cv-00640 (E.D. Ark.); 8) *Rohde*

² These actions include: 1) *Walton v. RC2 Corporation, et al.*, Docket No. 07CV3614 (N.D. IL.); 2) *Hesse, et al. v. Learning Curve Brands, Inc. et al.*, Civil Action No. 1:07-cv-03451 (N.D. Ill.); 3) *O’Leary, et at. v. Learning Curve Brands, Inc.*, Civil Action No. 1:07-cv-03682, (N.D. Ill.); 4) *Djurisic, et al. v. Apax Partners, Inc. et al.*, Civil Action No.1:07-cv-03707, (N.D. Ill.); 5) *Reddell, et al. v. Learning Curve Brands, Inc. et al.*, Civil Action No. 1:07-cv-03747, (N.D. Ill.); 6) *Rohde et al. v. Learning Curve Brands, Inc. et al.*, Civil Action No. 1:07-cv-04187 (N.D. Ill.); (7) *Deke, et al. v. RC2 Corp. et al.*, Civil Action No. 1:07-cv-03609 (N.D. Ill.) which are pending in the United States District Court for the Northern District of Illinois. These actions have been coordinated and assigned to a single judge, Judge Leinenweber. Two additional actions, 8) *Kreiner et al. v. RC2 Corp. et al.*, Civil Action No. 1:07-cv-04547 (N.D. Ill.); and 9) *Wilson v. RC2 Corp. et al.*, Civil No. 07-cv-0642 (N.D. Ill.) have since been filed and a motion is pending to also reassign those cases to Judge Leinenweber.

et al. v. Learning Curve Brands, Inc. et al., Civil Action No. 1:07-cv-04187 (N.D. Ill.); 9) *Kreiner et al. v. RC2 Corp. et al.*, Civil Action No. 1:07-cv-04547 (N.D. Ill.); 10) *Wilson v. RC2 Corp. et al.*, Civil No. 07-cv-0642 (N.D. Ill.); and 11) *Kelly v. RC2 Corporation*, Civil No. 07- cv-02525 (E.D. N.Y).

3. The five Actions proposed for transfer herein are the only actions on file outside the Northern District of Illinois of which Plaintiffs are aware. Plaintiffs in the New York, Arkansas and Indiana actions agree to the proposed transfer to the Northern District of Illinois.

4. Plaintiffs propose that pretrial proceedings in the five Actions be transferred and coordinated in the Northern District of Illinois where nine of the 14 related actions are currently pending.

5. The centralization of these actions in a single judicial district for coordinated pretrial proceedings will promote the just and efficient conduct of these actions, will serve the convenience of all parties and witnesses and will promote the interests of justice because all actions involve common factual and legal issues, including:

- a. Whether defendants are strictly liable for the design, manufacture and/or marketing of dangerously defective products;
- b. Whether defendants negligently designed, manufactured, labeled and/or marketed the relevant products;
- c. Whether Class members' children who have handled, chewed on, and/or otherwise been exposed to Thomas Trains suffered adverse health effects, reactions or diseases caused by exposure to those products;

d. Whether Class members' children's increased risk of sustaining adverse health effects or other injury makes periodic diagnostic and medical examinations (medical monitoring) effective and reasonably necessary;

e. Whether defendants conducted, either directly or indirectly, appropriate research and testing of the relevant products to determine whether lead was contained in the surface paint on the Thomas Trains;

f. Whether defendants breached express and/or implied warranties covering the Thomas Trains;

g. Whether defendants were unjustly enriched at the expense of plaintiffs and the Class;

h. Whether the equitable, injunctive and declaratory relief should be granted;

i. Whether defendants' acts or omissions in connection with the sale of the relevant products constitute unfair and/or deceptive acts and practices within the meaning of the Illinois Consumer Fraud and Deceptive Business Practice Act, 815 ILCS section 505/1, *et seq.* and similar consumer fraud laws of other states;

j. Whether the Class has been injured by virtue of defendants' violations of 815 ILCS section 505/1, *et seq.*;

k. Whether defendants supervised and directed the manufacturing process of the recalled toys in the Peoples Republic of China;

l. Whether defendants had prior knowledge regarding the lead used in the recalled toys and how long they had possessed that knowledge; and

m. What representations were made by the defendants regarding the safety of the recalled toys.

6. Coordination of the actions before a single court will conserve judicial resources, reduce litigation costs, prevent potentially inconsistent pretrial rulings, eliminate duplicative discovery and permit the cases to proceed to trial more efficiently.

7. All actions are in the very early stages of litigation; no responsive pleadings have been filed nor has any discovery been conducted.

8. The proposed transfer and coordination in the Northern District of Illinois will be for the convenience of parties and witnesses, and will promote the just and efficient conduct of these actions because it is expected that plaintiffs' counsel in all actions will take discovery of the same witnesses and documents.

9. Transfer to the Northern District of Illinois is appropriate because nine of the 14 related actions were filed there; the Northern District of Illinois has the resources and judicial expertise to promptly and efficiently conduct this case; the Northern District of Illinois is more easily accessible and, most importantly, defendants are headquartered in the Northern District of Illinois where the Thomas Trains are researched, designed, developed, manufactured, produced, marketed and/or distributed.

10. Plaintiffs' motion is based on the accompanying memorandum of law, the filed pleadings and papers, and other materials that may be presented to the Panel before or at the time of any hearing in this matter.

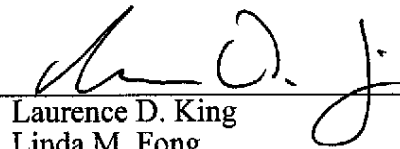
WHEREFORE, Plaintiffs respectfully request that the Panel order that the five Actions, as well as any cases that subsequently may be filed asserting related or similar

claims, be transferred to the Northern District of Illinois for coordinated pretrial proceedings.

DATED: August 24, 2007

Respectfully submitted,

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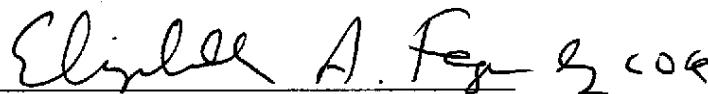
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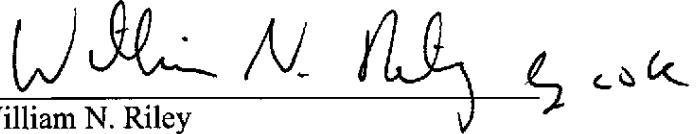
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DATED: August 29, 2007

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A handwritten signature in black ink, appearing to read "William N. Riley", followed by a stylized flourish that looks like "E. Cook".

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